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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/730,438 | 12/08/2003 | Martin Schnabel | CM2713Q | 2354 |

27752 7590 02/05/2007
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| EXAMINER |
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HILL, LAURA C

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| ART UNIT | PAPER NUMBER |
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3761

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 02/05/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/730,438

Applicant(s)

SCHNABEL ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-9 filed 28 November 2006 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Noda et al. (US 6,949,689). Noda discloses a disposable diaper 1 having absorbent member 4 interposed between a liquid permeable topsheet 2 and a liquid impermeable backsheet 3 (column 2, lines 29-32), wherein the backsheet 3 comprises a first nonwoven material 3b superposed on a breathable film 3a (column 2, lines 53-57), the backsheet having a multi-color printed pattern/ornamental design 10 (column 4, lines 9-14, figure 1), said backsheet having a L value 10 to 93, a b value of -5 to 0 and a value of less than 20 (column 4, lines 25-67), and a light transmittance/opacity of 40 to 83% (column 5, lines 5-16).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao et al. (WO 99/32164) in view of Rogers (US 5,133,707). Regarding claims 1 and 3-6 Tao discloses film comprising non-woven material and microporous film (page 1, lines 28-30, page 11, lines 27-31) used for diaper 50 back sheet 52 (page 10, lines 1-3) having single or multiple ornamental discernible printed design graphics 20 via flexographic and gravure printing processes (page 8, lines 14-16, figures 1 and 4) and said film composite having an "L value" of 93.46, "a value" of -0.24 and "b value" of 0.35 (page 3, lines 2-9, page 8, lines 19-21, page 13, lines 9-13), said graphic not covering more than about 60% of the back sheet (figures 1-4). Tao *does not expressly disclose* an L value from 10-75. **Rogers** discloses a composite adhesive fastening tape 2 for use with diapers (column 2, lines 7-20) with an L value of 50-75 (column 4, lines 24-27), wherein the L value is a result effective variable since the higher the L value the better results in an improved obscuring effect (column 4, lines 19-22). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made modify Tao with the claimed L values for improved obscuring effect since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Furthermore, where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially

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identical processes, a prima facie case of either anticipation or obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977).

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tao et al. (WO 99/32164) in view of McCormack (WO 00/38915A1). Tao discloses the article as discussed above with respect to claim 1. Tao *does not expressly disclose* opacity values. Opacity is a well known result-effective variable that results in an improved color contrast for masking purposes as supported by McCormack (page 11, lines 14-22, page 22, table 2) since it is a result of the type of materials used. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Tao with the opacity and distance between rear waist edge and absorbent core end edge values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

5. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao et al. (WO 99/32164) in view of Schleinz (US 5,612,118). Tao discloses the article as discussed above with respect to claim 1. Tao *does not expressly disclose* a half-toning printing process in which one of the surfaces of the polymeric film or non-woven web that comprise the back sheet is covered with an opaque or transparent ink while a second area is covered with the same ink. **Schleinz** discloses a training pant 20 having outer cover 42 comprising elasticized substrates 50,54 with a plurality of graphics 46 printed on outer surface 44 of outer cover 42 (column 3, lines 35-40 and 54-56, column 4, lines 21-26 and 40-43), said graphics printed using a semi-tone/half-toning process

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on two different areas of the composite outer cover 42 in order to eliminate blurred or ghost graphics (column 5, lines 15-27, column 6, lines 7-19 and 47-50, figures 1-3). One would be motivated to modify the printed graphics of Tao with the half-toning printing process of Schleinz for improved graphic image quality since both references disclose disposable absorbent wearing articles with back sheets having printed graphics thereon. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the printed graphics and thus provide half-toning process printed graphics.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

